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OCTOBER MEETING, 1873.

A stated meeting was held at 11 o'clock A.M., on Thursday, the 9th instant; the President in the chair.

The Recording Secretary read the record of the preceding meeting.

The Librarian read the list of donors to the Library for the past month.

The President announced a number of gifts to the Library and Cabinet from Miss D. L. Dix, which are duly recorded in the accessions book under this date.

The President announced the death of a Corresponding Member, Robert Bigsby, LL.D., F.R.S., an English writer of note elected in 1851, and recorded as of Ashby-de-la-Zouch, Leicestershire, and read the following notice of him from a New York journal:—

“He was the son of Robert Bigsby, Registrar of Nottingham, in which city he was born in 1806. Originally intended for the legal profession, he was disappointed in the prospects of advancement in the law, and he devoted himself to the study of antiquities. In 1842 he commenced his career as an author by publishing a volume of ‘Miscellaneous Poems and Essays,’ followed in 1848 by the ‘Visions of the Times of Old; or, The Antiquarian Enthusiast.’ In these two works he treats of the early history and associations of the ancient town of Repton, the school of which he had attended in his youth. For many years he had been engaged in collecting materials for a history of Repton, which he finally published in 1854. Among his other works may be mentioned a dramatic romance, in twelve acts, called ‘Ombo,’ a historical sketch of the slave conspiracy in Malta, during the days of the Knights of St. John; ‘Scraps from my Note-book,’ ‘Boldon Delaval,’ ‘My Cousin’s Story,’ ‘The Delaval Correspondence,’ &c., books all of which are little known in this country, but which brought their author reputation at home. Dr. Bigsby became the possessor of several articles which had belonged to Sir Francis Drake, the celebrated navigator of the time of Queen Elizabeth. Among these was the astrolabe which Sir Francis had used in his voyages. This Dr. Bigsby presented to King William IV., who placed it in Greenwich Hospital. Other relics of the old seaman were presented to the British Museum by Dr. Bigsby. The diploma of LL.D.,

possessed by the subject of this sketch, was conferred because of his merits as a writer. His name was on the civil list for a literary annual pension of £100; and, in addition to being Secretary and Registrar of the English branch of the Order of St. John, he was an honorary and corresponding member of several literary societies of foreign countries."

The President said he had received a note of inquiry from our assistant, Mr. Arnold, as to the portrait of our late associate and Vice-President, the Hon. David Sears, deposited in the Society's Cabinet two or three years ago. The President said that Mr. Sears had presented the portrait to him to make such disposition of as he might choose, and he now presented it to the Society. It was painted by Pratt in 1858.

The President read the following letter from the Hon. C. J. Hoadly:—

HARTFORD, September 17th, 1873.

Hon. ROBERT C. WINTHROP,

President of the Massachusetts Historical Society.

DEAR SIR,—I take pleasure in sending you the decree of the King in Council in the case of Phillips *vs.* Savage, transcribed from a copy communicated to Governor Talcott in 1739, now among the papers of the Connecticut Historical Society.

As the briefs of counsel were printed in the volume of Proceedings for 1860–62, the accompanying decree completes the report of this important case.

The decree in Winthrop *vs.* Lechmere, on which Phillips relied, is printed in the seventh volume of the Colonial Records of Connecticut, p. 571. It is said that Mr. Lechmere failed in his defence for want of "a good sword formed of the royal oar," or its application; and that the counsel employed by him were not accustomed to business of this kind.

After the decision in Winthrop *vs.* Lechmere, as the colony of Connecticut had not been heard in the matter, it seems that intestate estates continued to be settled in the accustomed manner, the sentence of nullity of the colonial law notwithstanding; and, if appeals were made from the Probate to the Superior Court, they were continued from term to term. Meantime, efforts were made, by petition to the home government, for the re-establishment of the law, or at least for a confirmation of what had been done by the probate courts before Winthrop's appeal. Finally, in the appeal of Clark *vs.* Tousey, from the courts of Connecticut, on the same point with the two cases above mentioned, the Lords Justices, on the 18th of July, 1745, ordered the appeal to be dismissed.

Very truly yours,

CHARLES J. HOADLY.

At the Court at St. James's, the 15th day of February, 1737.

PRESENT:

The King's most Excellent Majesty.

Lord Chancellor.	Earl of Essex.
Lord President.	Earl of Selkirk.
Lord Privy Seal.	Earl Waldegrave.
Lord Chamberlain.	Earl Fitzwalter.
Duke of Rutland.	Viscount Torrington.
Duke of Argyle.	Mr. Comptroller.
Duke of Montagu.	

Upon reading at the Board a report from the Rt. Hon'ble the Lords of the Committee of Council for hearing Appeals from the Plantations, dated the 16th of last month, in the words following, viz.:

In obedience to an Order in Council of the 21st day of May, 1735, referring unto this committee the humble petition and appeal of Gillam Philips, of Boston, in the county of Suffolk, in the Province of the Massachusetts Bay, brother to Henry Philips, Gent., deceas'd, setting forth, That the said Henry Philips, being seized of a considerable estate and also possesed of a large personal estate in Boston aforesaid, died some time since intestate and without issue, leaving behind him his mother Hannah Philips, widow; the petitioner, his only brother; his sister Hannah Savage, wife of Habijah Savage, Esq.; Faith Savage, wife of Arthur, another sister; and the representatives of Mary Butler, deceas'd, who was a third sister of the said intestate: That upon the death of the said Henry Philips, that is to say, on the 17th of July, 1730, administration of his goods, chattels, rights, and credits, was granted to the petitioner, his only brother, who duly administered the personal estate: That the petitioner's said mother and sisters, and the representatives of the said third sister, upon the death of the said Henry Philips insisted that they were intituled to an equal distributory share of the intestate's real estate with the petitioner, under two several acts past in the said Province, the one in the fourth year of the reign of their late Majesties King William and Queen Mary, intituled an Act for the settlement and distribution of the estates of intestates; the other in the ninth year of Queen Anne, intituled an Act in addition to and for the explanation of the act for settlement and distribution of the estates of intestates; whereas the petitioner insisted that he was by the common law of the realm solely intituled thereto as heir-at-law to his brother, and that no act of that Province cou'd vary the common law of the realm, or change or alter the course of descents, and that the said two acts were void and null, for want of power in the Assembly of the said Province to enact the same; and the petitioner refused to distribute the said intestate's real estate: That thereupon, on the 6th of April, 1733, the judge of the probate of wills and granting administration made an order empowering 5 freeholders to make an equal division of the said intestate's real estate between his mother, brothers, and sisters, and their

representatives, in five equal parts; and upon the 7th of May, 1733, the said 5 freeholders made their return of division and partition of the said intestate's real estate, which was valued at 4000*l.*, and they divided the estate into 5 parts, and set off and allowed $\frac{1}{5}$ th for the petitioner, and $\frac{1}{5}$ th apiece for his mother and 2 sisters and the children of the 3d sister; which return being presented to the judge of probates and administrations, he was pleas'd, by his order of the 15th of May, 1733, to allow and approve thereof: That the petitioner, conceiving himself aggrieved by the said orders directing and approving the said division and distribution, and also by the said division and distribution itself, on the 10th of Oct., 1733, preferr'd his petition of appeal therefrom to the Governour and Council of the Massachusetts Bay, assigning the 3 following reasons, — First, that he was the only brother and heir-at-law of the said Henry Philips, and, as such, the whole real estate of the said Henry Philips by the law of England descended to him; 2d, That the power given the Province of making laws was by their charter expressly restrained, so as the same be not repugnant or contrary to the law of the realm of England: but that the act of the 4th of King William and Queen Mary for distribution of intestates' real estates, and the proceedings of the judge of the probates and administrations grounded thereon, was repugnant or contrary to the laws of the realm of England, and consequently *ipso facto* void; and, 3d, That by the law no judge of probates had any thing to do with real estates, or the course of descents, the right and tryal thereof appertaining to the King's courts; and therefore in the form of the letters of administration no power was delegated to the administrator concerning the real estate; and therefore the petitioner by his said petition to the Governour and Council pray'd reversion and costs: That the petitioner's said appeal came on to be argued before your Ma'ties Governour and Council of the Province on the 2d of Nov., 1733, when the court affirmed the said order of the said judge of probates for dividing the real estates of the said Henry Philips among his mother, brother, and sisters: That the petitioner, conceiving himself greatly aggrieved by the order made by the Governour and Council, on the 6th of Nov., 1733, preferr'd his petition to the said Governour and Council, praying leave to appeal from the said order of the 2d of Nov., 1733, to your Ma'ty in Council, on entring into the usual security; upon reading which petition, the same was order'd to be dismiss: That the petitioner, thereupon, apply'd by petition to your Ma'ty in Council, to be admitted to an appeal from the said three orders of the 6th of April, 15th of May, and 2d of Nov., 1733; and your Ma'ty by order in council of the 12th day of Feb., 1734, pursuant to a report of the Lords of the Committee for hearing Appeals from the Plantations, was pleas'd to order the petitioner to be admitted to appeal to your Ma'ty from the said three orders, on giving the usual security here: That the petitioner, having entered into such security accordingly, most humbly appealed from the said three orders of the 6th of April, 15th of May, and 2d of Nov., 1733, to your Ma'ty in Council, and therefore humbly pray'd your Ma'ty to appoint a day for hearing the said appeal, with

the usual summons for the said Hannah Philips, widow, Habijah Savage and Hannah his wife, and Arthur Savage and Faith his wife, and the representatives of the said Mary Butler, and that the said several orders might be reversed, and that the said division so made under the same, as aforesaid, might be set aside and declared null and void. — The Lords of the Committee having on the 13th of this instant, and again on this day, fully heard the said appellant, and also Faith Savage, one of the respondents, by their counsel learned in the law (the other respondents not appearing, tho' duly summoned in New England), and their Lordships having likewise fully examin'd and maturely considered all the proceedings in this cause, humbly represent to your Ma'ty, that it appeared to their Lordships that the Act of Assembly aforementioned, intituled an Act for the settlement and distribution of the estates of intestates, was passed in the said Province of the Massachusetts Bay so long since as the year 1692, soon after the new charter of incorporation was granted to the said Province by King William and Queen Mary, and that the said act was ratified and confirm'd on the 22d of Aug., 1695, by the then Lords Justices in Council, and that several other acts of assembly, in addition thereto and explanatory thereof, have been since passed in the said Province of the Massachusetts Bay, and particularly an act past there so lately as the year 1731, intituled an Act in addition to the act intituled an Act for the settlement and distribution of the estates of intestates, which last act appears to have been confirm'd by your Ma'ty's order in Council of the 27th of Jan., 1731. And their Lordships further humbly represent to your Ma'ty, that by certificates under the hands of Josiah Willard, Esq., judge of the court of the probate of wills and for granting letters of administration, &c., in the said Province, and of John Boydel, register of the said court, duly transmitted under the seal of the said Province, the last of which persons had been possessed of the office of register from the year 1717, and certified that he had carefully examined the records of the said court from the year 1692, — it appear'd to their Lordships that, from that time, it had been the constant usage for the several judges of the court of probates, &c., to cause the estates of all persons dying intestate to be distributed pursuant to the tenor and according to the directions of the said several acts of Assembly. Their Lordships do, therefore, agree humbly to report as their opinion to your Ma'ty, that the said three orders, and the division made under the same, now appealed from, be affirmed, and that the said appeal be dismiss.

His Majesty this day took the said Report into consideration, and was pleased, with the advice of his Privy Council, to approve thereof, and to order, that the said three orders of the 6th of April, the 15th of May, and the 2d of Nov., 1733, and the division made under the same, now appealed from, be, and they are hereby, affirmed, and the said appeal dismiss. Whereof the Governour or Commander in Chief of his Majesty's Province of the Massachusetts Bay, for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly.

W. SHARPE.

The Hon. Charles Sumner and Charles W. Eliot, LL.D., President of Harvard College, were elected Resident Members.

The Rev. Thomas Hill, D.D., of Portland, Maine, was elected a Corresponding Member.

The President read an old printed circular letter of this Society, dated 15th October, 1832, soliciting funds to provide the Society with better accommodations, and containing the names of a number of subscribers. This effort resulted in the removal of the Society to the site which they now occupy in Tremont Street, in the following year.

In connection with this paper, the President spoke of the present needs of the Society,—particularly the want of funds for continuing the publication of the Collections; and he submitted a paper providing for the payment yearly of a sum of money by members, in lieu of the annual assessments for the years 1874, 1875, 1876, with his own name already signed to it, conditioned upon a subscription of at least \$1200. The paper was referred to the Standing Committee.

The Treasurer made a statement of the finances of the Society, showing that the regular income was already pledged in advance to a large extent.

The Recording Secretary read the report called for by the resolution offered by Mr. Whitmore at the last meeting.

Dr. ELLIS presented to the Society, in the name of the Rev. Henry C. Badger, of Boston, an original letter of Jesse R. Grant, the father of President Grant, dated February 19, 1839, addressed to the Hon. Thomas L. Hamer, M.C., Washington City, making application through him for an appointment, as a cadet at West Point, for his son Ulysses. The thanks of the Society were ordered for the letter.

NOVEMBER MEETING, 1873.

A stated meeting of the Society was held on Thursday, the 11th of November, at 11 o'clock, A.M.; the President in the chair.

The Recording Secretary read the record of the preceding meeting.

The Librarian read a list of the donors to the Library for the last month.

The Corresponding Secretary read letters of acceptance from